

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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LEAF FUNDING, INC.,

Plaintiff,

v.

COOL EXPRESS WISCONSIN, INC.,  
SOUTHERN WISCONSIN DIESEL &  
TRAILER REPAIR, INC.;  
MELODY J. WESSELS; ELAINE WESSELS;  
DARRELL L. WESSELS; DANNY D. WESSELS;  
DIRECT CAPITAL CORP.,

Defendants.

ORDER

07-cv-589-bbc

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On November 21, 2008, plaintiff Leaf Funding, Inc. filed a motion for default judgment against all defendants other than Direct Capital Corporation. Dkt. #52. On December 4, 2008, plaintiff advised the court that defendants Darrell, Melody, Elaine and Darrell Wessels had filed for bankruptcy. Dkt. #54. On December 8, 2008, plaintiff filed an amended motion for default judgment against defendants Cool Express Wisconsin and Southern Wisconsin Diesel & Trailer Repair, Inc. only. In the same document, it amended its motion for default judgment against the Wessels defendants, stating that it would not be seeking default judgment against them at that time. Dkt. #56. Accordingly, on December 9, 2009, the court entered default judgment against defendants Cool Express Wisconsin and

Southern Wisconsin Diesel & Trailer Repair, Inc., only. Dkt. #58. On February 9, 2009, the court granted summary judgment in favor of plaintiff on its breach of contract claim against defendant Direct Capital Corporation. Dkt. #74. This leaves defendants Darrell, Elaine, Danny and Melody Wessels as the only remaining defendants against whom judgment has not been entered.

A review of the federal court's PACER system confirms that Darrell, Elaine, Danny and Melody Wessels are still engaged in bankruptcy proceedings before the United States Bankruptcy Court of the Western District of Wisconsin. Case Nos. 08-bk-16191-rdm and 08-bk-16192-rdm. Because the proceedings in bankruptcy may dispose of plaintiff's case against defendants Darrell, Elaine, Danny and Melody Wessels, IT IS ORDERED that plaintiff's claims against them are DISMISSED without prejudice, subject to the condition that this order of dismissal shall be vacated in the event that the bankruptcy proceeding is terminated without disposing of the rights of the parties in this case, or a timely request is made by either party that this order to dismiss without prejudice be vacated or for any other reason necessary to prevent manifest injustice. In the event that this order of dismissal is

vacated, the parties shall have all such rights as if this case had not been dismissed.

Entered this 18<sup>th</sup> day of February, 2009.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge